

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carlos Pena

DEFENDANTS

MobilexUSA, Inc. and James I. Collins, M.D.

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Baltimore

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number) Williams Cuker Berezofsky
Gerald J. Williams, Esq., Beth G. Cole, Esq., Samuel Abloeser, Esq.
1515 Market Street, Suite 1300, Philadelphia, PA 19102
(215) 557-0099

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|---|--|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 393 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §1332

Brief description of cause:

Personal Injury-Medical Malpractice

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Wendy BeetlestoneDOCKET NUMBER 15-cv-00534

DATE

8/4/15

SIGNATURE OF ATTORNEY OF RECORD

Beth G. Cole

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

CARLOS PENA

:

CIVIL ACTION

v.

:

MOBILEXUSA, INC. AND

:

JAMES I. COLLINS, M.D.

:

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

8/4/2015

Date

BETH G. COLE, ESQUIRE

Attorney-at-law

PLAINTIFF

Attorney for

215-557-0099

Telephone

215-557-0673

FAX Number

BCOLE@WCBLEGAL.COM

E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 3628 N. 7th Street, Philadelphia, PA 19140

Address of Defendant: 930 Ridgebrook Rd., 3rd Flr., Sparks Glencoe, MD 21152

Place of Accident, Incident or Transaction: SCI Quehanna Bootcamp, 4510 Quehanna Highway, Karthaus, PA 16845
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: 15-cv-00534 Judge Wendy Beetlestone Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify) Medical Malpractice
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Beth G. Cole, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 8/4/2015

Beth G. Cole, Esquire

36419

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: _____

Attorney I.D.#

the acceptable professional standards, and were the cause of Carlos Pena's injuries. Counsel's "Certificate of Merit", signed in compliance with Pennsylvania Rule of Civil Procedure 1042.3(a)(1) and (2) and 40 P.S. §1303.512 is attached hereto as Exhibit "A".

4. Venue is proper in this judicial district, pursuant to 28 U.S.C. 1391 (b), as a substantial part of the events and omissions giving rise to plaintiff's claims occurred therein.

THE PARTIES

5. Plaintiff, Carlos Pena, resides at 3628 N. 7th Street, Philadelphia, Pennsylvania. After his conviction for possession with intent to deliver a controlled substance on May 2, 2013 Pena was incarcerated at SCI Graterford and SCI Camp Hill. On October 17, 2013 Plaintiff was transferred to Quehanna Boot Camp in Karthus, Pennsylvania where he remained incarcerated until March 20, 2014. While incarcerated Pena was completely dependent upon defendants for his medical care.

6. Defendant, MobilexUSA, Inc. (hereinafter Mobilex), is a for-profit Maryland corporation which regularly conducts business in the Commonwealth of Pennsylvania, and whose principal place of business is 930 Ridgebrook Road, 3rd Floor, Sparks Glencoe, Maryland 21152. Defendant Mobilex, at all relevant times, acting by and through its agent, servant and/or employee, defendant James I. Collins, undertook and/or assisted or otherwise participated in providing mobile, on-site diagnostic services to inmates at SCI Quehanna Boot Camp.

7. Defendant James I. Collins, M.D. is a physician licensed to practice medicine. Upon information and belief, defendant James I. Collins is a citizen of a state outside of the Commonwealth of Pennsylvania and at all times material hereto, an employee or agent of defendant Mobilex, who acted within the course and scope of his employment or agency and

played a substantial role in Pena's medical treatment on behalf of Mobilex, including providing diagnostic services while Pena was incarcerated at SCI Quehanna Boot Camp.

ALLEGATIONS OF MATERIAL FACT

8. On October 17, 2013 Pena was transferred to SCI Quehanna Boot Camp.
9. On November 5, 2013 Pena was seen in the medical unit with complaints of bowel problems, including no bowel movements since 10/29. The physician's assistant in the medical unit, Patrick J. Nagle, PAC diagnosed "? PUD, Irregularity", and ordered an Upper GI series.
10. On November 12, 2013 Pena underwent an Upper GI diagnostic test performed by defendant Mobilex's technician at SCI Quehanna Boot Camp.
11. On November 13, 2013 defendant James I. Collins, M.D. misread the Upper GI images as "unremarkable" and "normal" and failed to diagnose an annular neoplasm of the gastric antrum extending across the pyloric canal into the base of the duodenal cap.
12. Between November 15, 2013 and January 28, 2014 Pena's condition continued to worsen, and he experienced constant, intense pain as a result.
13. On January 29, 2014 when Pena's complete blood count reflected critically, life-threatening low levels of RBC, HGB and HCT he was sent by emergency transport to UPMC Altoona Hospital.
14. Upon admission to UPMC Altoona Hospital Pena underwent a blood transfusion due to significant anemia. An Endoscopy was performed which revealed a large gastric mass diagnosed as T3N3 [stage 3"], metastatic gastric cancer.
15. During his admission from January 29, 2014 through February 24, 2014 Pena underwent a surgical procedure, exploratory laparotomy and lymph node dissection.
16. On February 6, 2014 the November 12, 2013 Upper GI study was reread by Dr.

Norman Silverman who documented that "These images demonstrate an annular neoplasm of the gastric antrum extending across the pyloric canal into the base of the duodenal cap which was not reported. Lymphoma seems most likely."

17. Pena was discharged from UPMC Altoona Hospital on February 24, 2014 and transferred to SCI Smithfield on March 20, 2014 where he underwent outpatient chemotherapy and radiation at UPMC Altoona Hospital from March 21, 2014 through May 9, 2014.

CAUSES OF ACTION
COUNT I
PROFESSIONAL NEGLIGENCE
PLAINTIFF CARLOS PENA v. DEFENDANTS MOBILEX AND
JAMES I. COLLINS, M.D.

18. The allegations of all the preceding paragraphs of this Complaint are re-alleged herein as if fully set forth.

19. The negligence of the defendant Mobilex by and through its agents, servants and/or employees, including defendant James I. Collins, M.D. consisted of the following:

- a. Undertaking and performing diagnostic services without being sufficiently qualified, capable or experienced;
- b. Performing diagnostic services in a negligent and careless manner, in misreading as "normal" an Upper GI, failing to detect an abnormal gastric mass lesion that was clearly evident;
- c. Failing to use, in the performance of the same, that degree of skill, care, knowledge and attention ordinarily possessed and exercised by practitioners of the medical profession under like circumstances;

- d. Failure to use reasonable care in the diagnosis of Pena's medical condition more specifically by misreading as normal an Upper GI and failing to detect the abnormal gastric mass lesion that was clearly evident;
- e. Failing to seek and obtain advice and instruction, in the performance of the same, from qualified specialists or from superiors;

20. As a foreseeable, direct and proximate result of the defendants' negligent acts and/or omissions as hereinbefore set forth, plaintiff suffered significant bodily injury, an increased risk of serious harm due to delayed diagnosis of gastric cancer, and loss of chance of a better outcome.

21. As a foreseeable, direct and proximate result of the defendants' negligent acts and/or omissions as hereinbefore set forth, Pena was caused to experience intense pain and suffering, discomfort and emotional distress.

COUNT II
PLAINTIFF CARLOS PENA v. DEFENDANT MOBILEXUSA, INC.

22. The allegations of all the preceding paragraphs of this Complaint are re-alleged herein as if fully set forth.

23. At all times material hereto defendant Mobilex was responsible for the provision of medical services to plaintiff, including diagnostic care.

24. Through its agents, servants and employees, all of whom acted within the course and scope of their agency, supervision or employment, defendant Mobilex breached its duty to plaintiff by virtue of the actions and failures to act, including, but not limited to:

- a. Employing the defendant, James I. Collins, M.D. with knowledge of his lack of sufficient qualifications, capability or experience or failing to investigate or ascertain the extent of same;

- b. Directing or permitting the defendant James I. Collins to undertake and perform diagnostic services under the circumstances;
- c. Failing to direct or require the appropriate attention, advice and instruction of qualified specialists as to the same;
- d. Failing to train and supervise its agents, servants and/or employees in their provision of diagnostic services;
- e. Failing to take any precautions to reduce Pena's risk of harm, in part by insisting that radiologists review a high volume of diagnostic studies from remote locations, without adequate safeguards to insure that persons in the position of plaintiff are provided with accurate diagnoses of potentially fatal conditions.

JURY DEMAND

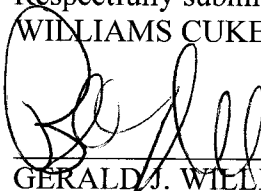
25. Plaintiff demands a jury determination of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, plaintiff asks the Court to enter judgment in his favor and against defendants, individually, jointly and severally, and award him damages in the amount in excess of the sum referenced by 28 U.S.C. § 1332 (b), plus such interest, fees and costs as are allowed by law.

Date: August 4, 2015

Respectfully submitted,
WILLIAMS CUKER BEREZOFSKY, LLC

By:  _____
GERALD J. WILLIAMS, ESQUIRE
Attorney I.D. No. 36418
BETH G. COLE, ESQUIRE
Attorney I.D. No. 36419
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Exh. A.

☒ the claim that these defendants deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom these defendants are responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bring about the harm;

OR

☐ expert testimony of an appropriate license professional is unnecessary for prosecution of the claim against the defendant.

Dated: August 4, 2015



BETH G. COLE
Attorney for Plaintiff
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